IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/09/2002

Coram

The Honourable Mr.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
The Hon'ble Mr.JUSTICE K.GOVINDARAJAN

W.P.No.24625 of 2002 and W.P.No. 24696 of 2002
and Wp.Nos. 25014, 25015 & 25632 of 2002

S.Mazhaimeni Pandian, .. W.P.24625/02
Advocate.

S.Packiaraj .. W.P.24696/02

K.Thanga Mohan .. W.P.25014/02

C.L.Shaji .. W.P.25015/02

Dr.S.D.Raajadevan, .. W.P.25632/02
Advocate. ..... Petitioners.

-Vs-

1.The State of Tamil Nadu,
Rep. by Chief Secretary to Govt.,
Fort St. George,
Chennai.600009.
.. 1st respondent, W.P.24625/02 &
R5, W.P.25632/02.

The Principal,
Dr.Ambedkar Law College,
Madras High Court Complex,
Chennai.1.
.. 1st respondent,
W.P.25632/02.

2.The Govt. of Tamil Nadu,
Rep., its Secretary,
Dept. of Law
Fort St. George,
Chennai.9. .. 1st respondent,
W.Ps.25014 & 25015/02 & 2nd
respondent,W.Ps.24625 &24696/02,
& R4, W.P.25632/02.

Director of Legal Studies,
Dr. Ambedkar law College,
Madras High Court Complex,
Chennai.1. .. 2nd respondent,

W.P.25632/02.

3.The Registrar,
Tamil Nadu Dr. Ambedkar
Law University,
Poompozhil, 5 Greenways
Road, Chennai.600 035. .. 3rd respondent,W.P.24625/02 &
W.P.25632/02.

The Chairman,
Bar Council of India,
New Delhi .. 3rd respondent,W.Ps.25014 &
25015/02.

4.The Director of Legal .. 4th respondent,W.P.24625/02,
Studies, Nandanam, 1st respondent,W.P.24696/02 &
Chennai.600 035. 2nd respondent,W.Ps.25014 &
25015/02.

W.P.No.24625/2002, under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, as stated therein.

W.P.No.24696/2002, under Article 226 of the Constitution of India praying to issue a Writ of declaration, as stated therein.

W.P.Nos.25014 and 25015 of 2002, under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, as stated therein.

W.P.No.25632/2002, under Article 226 of the Constitution of India praying to issue a writ of mandamus as stated therein.

Mr.S.Mazhaimeni pandiyan : W.P.24625/02.
Petitioner-in-person

For Petitioners in : Miss R.Vaigai,
M/s.K.Bharathi, W.Ps.25014 & 25015/02.
S.M.Mohan Gandhi,

For M/s.S.Ravi,
S.Sivakumar,

Mr.N.Paul Vasanthakumar, : For Petitioners,
for M/s.R.Sankarasubbu, W.P.24696/02.
K.Kanagaraj

For Respondents 1,2, & 4 : Mr.R.Muthukumaraswamy,
in W.P.No.24625/2002
Addl.Advocate General,
Assted by For Respondents 1 & 2,
Mr.V.R.Rajasekaran,Spl. W.P.25014 &25015/02;
G.P. For For Respondents 1 & 2,
W.P.24696/02;
For Respondents 1,2,4 &5 in
W.P.25632/02;

Mr.P.Jothimani, for : For R3in W.P.25014 &25015/02.
Bar Council of India,

Mr.T.D.Vasu, for : For R3 inW.P.24625/02 &
University, for for R3 inW.P.25632/02.

:COMMON ORDER

K.GOVINDARAJAN,J.

The petitioners in W.P.Nos.24625, 24696, 25014 and 25015 of 2002, who are probono public have challenged the correctness of the action of the Government in discontinuing the B.L. Degree Course both three years and five years in Dr. Ambedkar Government Law College, Chennai, and have sought for a direction to the Government to continue the same, as it was done earlier.

2.The petitioner in W.P.No.25632/2002, a practicing advocate and social worker has prayed to issue a writ of mandamus, to direct the respondents to stop all processes relating to the notification given on or about 6.7.2002, announcing about the new five-year B.A.,B.L. (Hons.) Course, without providing for age and marks relaxations for Most Backward Class and Backward Class students.
3.Originally, there was only one Law College at Chennai, for the entire Madras State, called Government Law College, Chennai. Taking into consideration the demand for law course, the Government wanted to have Law Colleges in the other regions also. So, first, the Government Law College at Madurai was started. Thereafter, it was started at Tiruchi and Coimbatore, and recently a Law College was started at Tirunelveli also.

4.Similarly, originally, the Law College at Madras was conducting two-year course and subsequently three-year course was introduced. Thereafter, five-year law course was also introduced. To meet the demand of the working people, evening law courses were started in addition to the regular law courses, and it was discontinued as directed by the Bar Council of India.

5.The Director of Legal Studies seems to have sent a proposal on 9.5 .2002 to the Government recommending for upgradation of the Ambedkar Government Law College at Chennai to the level of National Law School of India, Bangalore. The Government also after considering the said proposal took a policy decision to upgrade Dr. Ambedkar Government Law College, Chennai. On the basis of the said decision, the Government issued orders in G.O.Ms.No.332, Law Department, dated 30.5.2002. In the said Order, the Government has passed the following order:-

"(i) Admission will be made only for the Five Year B.L. (Hons.) Degree course to be commenced in Dr.Ambedkar Government Law College, Chennai from the Academic Year 2002-2003.

(ii) There shall not be more than two sections in each year of the Course and the student strength shall not exceed 40 in each section.

(iii) Efficient teachers will be selected, by a Committee to be constituted by the Government for the purpose, from among the Government Law College Teachers for the B.L. (Hons.) Degree Courses. The number of such teachers will be decided after finalisation of the syllabus and as per the need.

(iv) The class room, furniture, Library, etc., available in the Dr. Ambedkar Government Law College, Chennai shall be made use of for this purpose.

(v)The eligibility criteria for admission, procedure for admission, the syllabus for B.L. (Hons.) Degree Course and other matters which are not specifically mentioned in this order will be the same as fixed by the Tamil Nadu Dr.Ambedkar Law University or the Course to be conducted by the 'School of Excellence'."

Pursuant to the said Government Order, the Tamil Nadu Dr. Ambedkar Law University issued a Notification in the Newspaper, "The Hindu", dated 30.6.2002, calling for Applications for the admission of Fiveyear B.L. (Hons.) Degree Course 2002-2003. It is relevant to mention here that the Applications were not called for by the College, but by the Registrar of the said University. The Director of Legal Studies called for Applications for admission to three-year and five-year B.L. Course for 2002-2003, only in the Law Colleges situated in Madurai, Tiruchirappalli, Coimbatore and Tirunelveli. No Applications were called for, for admission to such course in Dr. Ambedkar Government Law College, Chennai. So the petitioners have come forward with the above Writ Petitions on the basis that pursuant to the said Government order, the respondents have decided to discontinue Five-year and Three-year B.L. Degree Course in Dr.Ambedkar Government Law College, Chennai.

6.According to the petitioners, the students hailing from northern districts will be deprived of getting studies in Law by discontinuing five-year and three-year B.L. Course in Dr. Ambedkar Government Law College, Chennai. The students who can join the Law College in Chennai are forced to join the course in other colleges which are situated in remote places, and they have to stay either in hostels or in other places by spending huge

amount. It is also stated that the students who intend to apply for the new course started pursuant to the said Government Order should obtain at least 70% marks in Plus 2 examination, even to appear for the Entrance Examination, and they have to pay a sum of Rs.39,000/- per annum towards fees, instead of Rs.600/- which was paid earlier. On that basis, it is stated that the right to get legal education for the students hailing from northern parts of Tamil Nadu is denied completely, and so the action of the respondents in discontinuing the three-year and five-year B.L. Course is arbitrary and illegal, besides being violative of Articles 14, 16 and 21 of the Constitution. It is also stated that before making such changes by introducing B.L. (Hons.) Degree Course and also discontinuing the said course already conducted, the respondents have not followed the schemes and norms prescribed by the Bar Council of India and the University Grants Commission.

7.The Additional Secretary to Government of Tamil Nadu has filed a counter affidavit. In the counter, it is specifically stated that in view of the decision taken to introduce five-year B.L. (Hons.) Degree Course in Dr. Ambedkar Government Law College, Chennai from academic year 2002-2003, the infrastructural facilities available in the said Law College were made available for conducti ng the said course. Since there is no scope for creating additional infrastructural facilities within the campus of the said College, the Government was constrained to discontinue the Five-year and Three-year B.L. Degree course so far conducted in the said College. But, with a view to maintain the existing intake in Government Law Colleges, the Government had increased the intake in the other Government Law Colleges situated at Tiruchirappalli, Coimbatore and Tirunelveli, as per G.O.Ms.No.466 Law (Legal Studies) Department dated 19.7.2002. It is further specifically stated that having regard to the non-availability of space in the campus of Dr. Ambedkar Government law College, Chennai, the Government is not in a position to continue the Three-year and Five-year B.L. Degree course as well as the newly introduced Five-year B.L. (Hons.) Course.

8.We heard the arguments of Ms.R.Vaigai, learned counsel appearing for the petitioners in W.P.Nos.25014 and 25015 of 2002, Mr.Paul Vasanthakumar, learned counsel appearing for petitioner in W.P.No.24696/200 2, the petitioner in W.P.Nos.24625/2002 and 25632/2002, Mr. Muthukumarasway, learned Additional Advocate General, appearing for the Government and the Director of Legal Studies, Chennai, Mr.T.Vasu, learned counsel appearing for Tamil Nadu Dr. Ambedkar law University and Mr.P.Jothimani, learned counsel appearing for the Bar Council of India.

9.From the above pleadings and arguments of the learned counsel on both sides, we have to decide whether the discontinuance of Threeyear and Five-year B.L. Degree course in Dr. Ambedkar Government Law College, Chennai is sustainable in law.

10.Till the Government Order in G.O.Ms.No.332, Law Department, dated 30.5.2002 was issued, the Five-year and Three-year B.L. Degree courses were conducted in Dr. Ambedkar Government Law College, Chennai. It is relevant to mention here that there is no notification nor announcement regarding the discontinuance of the said courses in the said college. The petitioners came

to know about the discontinuance of the said courses only when the Applications for Entrance Examination were called for by the Director of Legal Studies, Chennai, for the Three-year and Five-year B.L. Degree courses for the academic year 2002 -2003, as the Director of Legal Studies, Chennai, called for Applications only for the colleges situated at Madurai, Tiruchirappalli, Coimbatore and Tirunelveli, and not for Dr. Ambedkar Government Law College, Chennai. The said notification was notified in "The New Indian Express", dated 3.7.2002. Moreover, the Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai, called for Applications for admission to Five-year B.A.,B.L. (Hons.) Degree Course for the academic year 2002-2003 to be conducted in Dr. Ambedkar Government Law College, Chennai. The said notification was published in the newspaper, "The Hindu", dated 30.6.2002 and in other Dailies. Thereafter, the petitioners came to know about the said Government Order dated 30.5.2002, and the intention of the Government to discontinue the Three-year and Five-year B.L. Courses in Dr. Ambedkar Government Law College, Chennai. So they have approached this Court by way of filing these writ petitions.

11.Though no specific notification or announcement was made about the discontinuance of the said course, the said action has been admitted in the counter affidavit. So, we have to proceed further on the basis that in view of the decision taken by the Government to start Five-year B.L.(Hons.) Degree Course in Dr. Ambedkar Government Law College, Chennai from the academic year 2002-2003, the Tamil Nadu Dr. Ambedkar Law University, the respondents, have decided to discontinue the Three-year and Five-year B.L. Degree courses. The reason for such discontinuance as stated in the counter affidavit filed by the Government is that in view of the decision of the Government to start Fiveyear B.L. (Hons.) degree course in Dr. Ambedkar Government law College, Chennai, no space is available to conduct the courses already in existence also in the said college and so they are constrained to discontinue the said courses. To justify their action, they have come forward with the plea that they have increased the intake in the other law colleges at Tiruchirappalli, Coimbatore and Tirunelveli as per G.O. Ms.No.466 Law (Legal Studies) Department dated 19.7.2002. So, we have to now consider whether such reasonings are justifiable, to discontinue the said course which was in existence already in the said college. The Government, though originally was conducting only one law college in Chennai, in view of the increasing demand for legal education, had started the other law colleges in various regions. Further, there is another law college at Salem which is being run by a private trust.

12.The issue raised has to be tested on the basis of the rights provided under the Constitution and with reference to the relevant provisions of Advocates Act, 1961 and the Bar Council of India Rules. Though under part III of the Constitution "right to education" as such has not been guaranteed as a fundamental right, the Apex Court in a number of decisions laid down that inv iew of Articles 41 and 45, which were brought in under Chapter IV of the Constitution, it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizen. To develop the personality of a person for the purpose of keeping up the human dignity as assured in the preamble of the Constitution, he has to be educated. Art.41 of the Constitution recognises the individual's right to have education and

compels the State to make effective provision for securing the right to education within the limits of its economic capacity and development. So the State Government is under an obligation to make endeavour to provide educational facilities to its citizens.

13.So, the grievance of the petitioners can be tested on the basis of Article 21 and Article 39-A of the Constitution of India. Article 21 of the Constitution of India is the heart of a Fundamental Right conferred on the citizens under Part-III of the Constitution. Article 39-A is one of the Directive Principles of State policy under PartIV of the Constitution of India. The Fundamental Right conferred under Part-III and the Directive Principles of State policy under PartIV of the Constitution are complementary and supplementary to each other. The Fundamental Right conferred under Part-III of the Constitution can be achieved by enforcing the Directive Principles enumerated in Part-IV of the Constitution.

14.While considering the importance of these Part III and Part IV, the Courts have held that Part IV constitutes the stairs to climb the high edifice of a socialistic State and Part III is the means through which one can reach the top of the same.

15.The Apex Court in the decision in Miss Mohini Jain vs. State of Karnataka & others, AIR 1992 S.C. 1858, had considered the scope of application of Art.21 of the Constitution to claim "right to education" as a fundamental right and held as follows:-

"9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Art.41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

... ...

(12) "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Art.21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to it citizens.

13. The fundamental rights guaranteed under Part III of the

Constitution of India including the right to freedom of speech and expression and other rights under Art.19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

14. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organisations. These institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. As back as December, 1980 the Indian Medical Association in its 56th All India Medical Conference held at Cuttack on December 28-30, 1980 passed the following resolutions:

"The 56th All India Medical Conference views with great concern the attitude of State Governments particularly the State Government of Karnataka in permitting the opening of new Medical Colleges under various bodies and organisations in utter disregard to the recommendations of Medical Council of India and urges upon the authorities and the Government of Karnataka not to permit the opening of any new medical college, by private bodies."

It further condemns the policy of admission on the basis of capitation fees. This commercialisation of medical education endangers the lowering of standards of medical education and encourages bad practice."

... ...

17. We hold that every citizen has a 'right to education' under the Cnostitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or Staterecognised educational institutions. When he State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institution- whether State-owned or State-recognised – in reconition of their 'right to education' under the constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution.

18.Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at he economic-front, even

forty five years after achieving independence, thirty per cent of the population is living below poverty-line and the bulk of the remaining population is struggling for existence under poverty-conditions. The preamble promises and the directive principles are a mandate to the State to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The State action or inaction which defeats the constitutionalmandate is per se arbitrary and cannot be sustained. Capitation fee makes the availability of education beyond the reach of the poor. The State action in permitting capitation fee to be charged by Staterecognised educational institutions is wholly arbitrary and as such violative of Art.14 of the Constitution of India. During the last two decades the horizon of equality clause has been widened as a result of the Court's judgments. Earlier the violation of Art.14 was judged on the twin tests of classification and nexus. This Court in E.P.Royappa v. State of Tamil nadu (1974)2 SCR 348 : (AIR 1974 SC 555) gave new dimension to Art.14 in the following words (at p.583 of AIR):

"Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14."

16.It is well settled that a right to have a free legal aid and speedy trial are also guaranteed fundamental rights under Article 21 of the Constitution. Equal justice and free legal aid are provided under Article 39-A of the Constitution. Article 39-A of the Constitution declares that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economy or other disabilities. To discharge the said constitutional obligation, the States have to afford free legal aid and guarantee speedy trial. For that, large number of persons trained in law are essential. In effect, to guarantee the obligation given under the Constitution as enumerated under Articles 21 and 39-A of the Constitution, there is a need for a continuing and well-organized legal education. It also should be provided sufficiently to match with the increasing demand. The State cannot ignore such obligation either by pleading paucity of funds or otherwise. This view of ours is supported by the decision of the Apex Court in State of Maharashtra v. Manubhai Pragaji Vashi, (1995)5 S.C.C. 730, in which Their Lordships have held as follows:-

"17.In the light of the above, we have to consider the combined effect of Article 21 and Article 39-A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures "justice, social economic and political". Article 39-A of the Constitution provides "equal justice" and "free legal aid". The State shall secure that the operation of the legal system promotes justice. It means justice

according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39-A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The principles contained in Article 39-A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way – by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) to provide free legal aid "by suitable legislation or by schemes" or "in any other way", so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (emphasis supplied). The above words occurring in Article 39-A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all-round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a continuing and well-organised legal education, is absolutely essential reckoning, the new trends in the world order,to meet the ever-growing challenges. The legal education shoud be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained indifferent branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of ' deficiency' should be located and correctives should be effected with the cooperation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters. As in this case, a sole government law college cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges, which are duly recognised by the University concerned and/or the Bar Council of India and/ or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of selffinancing institutions, the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure

and for appointing competent teachers and staff. The private law colleges, on their own, may not afford to incur the huge and required in that behalf. The 'standard' of legal education and discipline is bound to suffer. It should not so happen for want of funds. The 'quality' should on account suffer in providing free legal aid and if it is not so, "the free legal aid" will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grants-in-aid by the State will facilitate and ensure the recognised private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well-trained or properly equipped law graduates in all branches year after year. That will in turn enable the State and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Article 21 and 39-A of the Constitution were totally lost sight of by the Government when it denied the grants-in-aid to the recognised private law colleges as was afforded to other faculties. We would add that the State has abdicated the duty enjoined on it by the relevant provisions of the constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39-A of the Constitution mandates or castes a duty on the State to afford grants-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear."

On the basis of the above said discussion, the Apex Court has also directed the State to extend the grant-in-aid to all Government recognised private colleges and to take steps to restart the colleges as they existed during the academic year 1985-1986 for the purpose of extending grant-in-aid from the academic year 1985-1986. While giving such direction to the State, the Hon'ble Judges of the Apex Court also have directed the Government to ensure that aided institutions abide by all the Rules and Regulations of the concerned authorities for recognition and obligation including those Rules and Regulations in the matter of recruitment of teachers, staff, other conditions of service, syllabus, standard of teaching and discipline including the Bar Council of India Rules, Part-IV, regarding standard of legal education. It is further directed that the Government shall, with the concurrence of the University concerned, the Bar Council of India, the Bar Council of Maharashtra or other body or persons may take all steps so that excellence in legal education is achieved.

17.On the basis of the decision cited above, the Apex Court in another decision in Shivaji University v. Bharti Vidyapeeth, (1999)3 S.C. C. 224, has not accepted the Government's decision to have a single law college in district of the State, and not permitting to start law colleges more than one in a district. The Apex Court has held in the said case that, even such decision is on the basis of the policy, the same has to be held as arbitrary and unreasonable. It is further held that the relevant factors which have to be taken into consideration is the population for which the existing colleges serves. On that basis, it was held that the rejection of permission to start another law college was arbitrary and unreasonable or otherwise defective.

18.In the present case, as stated already, only after taking into consideration the great demand to have education in law the Government started the colleges in various regions. The Government cannot now sustain the discontinuance of Three-year and Five-year B.L. Course in Dr. Ambedkar Government Law College, Chennai either on the basis that no space is available, as the Government had decided to have Fiveyear B.L. (Hons.) Degree course in the said college or on the basis that they have increased the intake in other law colleges so that the students are not deprived of in getting seats by discontinuance of the said courses in Dr. Ambedkar Government Law College, Chennai.

19.Both the reasons cannot be sustained. Law colleges were decentralised only to make it convenient for the students of that area to study in the law college situated nearby. Though they have no right to get a seat in a particular college, the petitioners are justified in saying that the students hailing from northern part of Tamil Nadu who are able to get a seat in Dr. Ambedkar Government Law College, Chennai are now compelled to join the other law colleges which are situated in far off places, thereby they are indirectly discouraged such students from joining the law course. So, the said action of the Government is contrary to the principles of the State as enunciated under Article 39-A of the Constitution, thereby the fundamental right assured under Article 21 of the Constitution to have legal education and consequently providing free legal aid and speedy trial had been ignored.

20.The other reason that space is not available also cannot be accepted. The Government is not justified in saying that the course which had already been conducted has to be discontinued on the basis that there is no space available, as they are going to start a new law course. The reason to discontinue the said course had been created only by the Government. If they want to start new law course, namely, Five-year B.L. (Hons.) degree course, they can start the same in any other place without disturbance to the existing law course. Such reasonings given by the Government to discontinue the said course, as held by the Apex Court, are nothing but arbitrary and unreasonable. This action of the State defeats the mandate of the Constitution as the students belonging to northern part of the State are deprived of the studies in law and so the discontinuance of the said course is per se arbitrary and cannot be sustained.

21.It is not the case of the Government that the discontinuance of the said three-year and five-year B.L. course is justifiable on the basis that it does not serve the purpose for which it was started. But it is the specific case of the Government, as stated in the counter affidavit and as submitted by the learned Additional Advocate General, that the discontinuance of the said course is only for want of space to conduct the said course. The said reason, as suggested by the Government, is their own creation by creating another law course afresh, in the same place in which the said three-year and five-year B.L. Course had been conducted. The said self-imposed reason cannot be relied on as a valid reason for discontinuing the existing law course. Further, it is also not the case of the respondents that they have upgraded the existing law course, though they have stated that they have decided to start upgraded course in law. As set out in the counter affidavit filed both

by Dr. Ambedkar Law University, Chennai and the Government, the five-year B.A.,B.L. (Hons.) degree course is a different course from the said existing law course. It is relevant to mention here that the Government have not come forward with the plea their economic capacity does not permit to find out an alternative space to start the new course as contemplated in the Government Order. If that is not the reason, the State is having an obligation under the Constitution to continue the existing law course in Chennai to serve the purpose for which it is started.

22.While considering the termination of employees with respect to a particular post, though they had put in such a long period of service, and making fresh recruitments for the same post, the Apex Court, in the decision in Madan Singh v. State of Haryana, AIR 1988 S.C. 2133, has held that such action cannot be justified, and it has further held that such terminated employees are entitled to continue in service.

23.From the above, it is clear that the reasonings given by the Government for the discontinuance of the said law course cannot be sustained as it is arbitrary. Moreover, the Government has not passed any order for the discontinuance of the said three-year and five-year B. L. Course. But they have simply called for Applications from the candidates who are willing to join five-year B.A.,B.L. (Hons.) Course in Dr. Ambedkar Government Law College, Chennai. As stated already, they have called for Applications only to the law colleges situated at Madurai, Tiruchirappalli, Tirunelveli and Coimbatore. Only in the counter affidavit, they have come forward with the plea that they have decided to discontinue the existing law course. It is not the case of the Government that they have informed as to the discontinuance of the said law course to the Bar Council of India.

24.As the Bar Council of India is the authority to regulate the standard of course in law, it is necessary to refer to the relevant provision of Advocates Act, 1961 and the Bar Council of India Rules.

25.Section 7 of the Advocates Act, 1961 enumerating the functions of the Bar Council of India, provides that its functions inter alia, shall be:
(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Council;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an Advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf.

26. Section 24 lays down the several qualfiications required for being admitted as Advocates on a State roll. Clauses (iii) and (iii-a) of S.24 (1)(c) provides that subject to the provisions of the Act, and the rules made thereunder, a person shall be qualified to be admitted as an Advocate on a State roll, after 12.3.1967, if he has obtained a degree of law either after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India;

or after undergoing a course of study in law, the duration of which is not less than two academic years commencing the academic year 1967-1968 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India.

27. Under Part-II, Chapter-III of the Bar Council of India Rules, the Council is empowered to form legal education Committee, and the said Committee has power and duties as contemplated under Rule 8 of Chapter-III of the Rules, which is as follows:-

"(a) to make its recommendations to the Council for laying down the standards of legal education for the Universities;

(b) to visit and inspect Universities and report the results to the Council.

28. Section – A of Part-IV of the Bar Council of India Rules deals with Five-Year Law Course after 10 + 2 or 11 + 1. It is relevant to extract Rule.17 of Section -A of Part -IV of the said Rules to understand the power of the Bar Council of India regarding approval of any course of study in law, which is as follows:-

"17.(1) No college after the coming into force of these Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India.

(2) An existing Law College shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved by the Bar Council of India."

29. Rule 18 of the said Rules deals with the power of the Bar Council of India to have an inspection by a Committee to be appointed by it for the purpose of approval of affliation of a law college. On the recommendation of the said Committee, the Bar Council of India has to take a decision for granting approval. On such approval, the Bar Council of India shall follow the procedure contemplated under Rule 19 of the said Rules, which is as follows:-

"19.(1) The Council shall publish by notification in the Gazette of India and in prominent newspapers in India the names of Universities whose degrees in law are recognised under these rules with a list of law colleges under the Universities which are eligible to impart professional Legal Education as provided for under these rules and send a copy of the notification above referred to all the Universities imparting Legal Education and State Bar Councils.
Provided that for the purpose of sub-rule (1) above, the existing University Law Departments and Law Colleges affiliated to Universities shall be deemed to be professional law colleges under these rules unless otherwise decided by the Council.
(2)Information about the non-recognition or derecognition of the degree in law of a University shall also be sent to all Universities in India imparting legal education and to all State Bar Councils."

From the above, it is clear that to impart instruction in a course of study in law, approval of affiliation of a new law college and recognition of the degrees from the Bar Council of India are absolutely mandatory.

30.In the present case, it is not in dispute that to start a new law course, namely, five-year course in B.L. (Hons.), the Government has to obtain approval from the Bar Council of India. Unless such an approval is given, the student who obtained a degree will not be allowed to enroll himself as an Advocate. The course of study in law is mainly to enable the students who have got law degrees, to get themselves enrolled as Advocates. When that being the fact, the Government themselves cannot start a law course without obtaining approval from the Bar Council of India, especially when it is absolutely required under the Bar Council of India Rules. They should stand as a model to others in following the Rules and Regulations. Even if the Government wants to start a 'School of Excellence' in law, taking into consideration of changing need of the society, it has to be started without disturbing the existing studies, as the qualification with high marks even for the Entrance Examination and the high fee structure contemplated for the new course prevents the average and poor students to join the said course.

31.According to the counter affidavit filed by the Government, Tamil Nadu Dr. Ambedkar Law University has granted affiliation for starting the new law course, namely, five-year B.L. (Hons.) degree course, on 31.7.2002 and for approval of the said affiliation from the Bar Council of India, they made Applictions on 12.8.2002. Meanwhile, the notifications calling for Applications had been issued on 30.6.2002, 4.7.2002 etc. The last date for receipt of Applications was also prescribed as 15.7.2002 and subsequently it was extended to 24.7.2002. The Entrance Examination also was conducted on 27.7.202. All these processes had been done by the said University without even getting approval of affiliation from the Bar Council of India, though such an approval is necessary under the Bar Council of India Rules.

32.Even with respect to the submission of the learned Additional Advocate General, they have not reduced the total intake of the students who wanted to study the said three-year and five-year law course. According to him, they have distributed the intake to other colleges situated at Madurai, Tiruchirappalli, Coimbatore and Tirunelveli, the particulars of which are given in the counter affidavit filed by the Director of Legal Studies,Chennai, as extracted below:-

"3.I state that the details of the number of intake in Government Law College, Maduai and the revised approved intake as per the G.O.Ms. No.466 Law (Legal Studies) Department dated 9.7.2002 are as follows:-

- - - -

College, Madurai

2. Government Law 200 160 3 60
College, Trichy

3. Government Law 200 160 3 60
College,Coimbatore

4. Government Law 200 160 3 60
College, Tirunelveli

Total seats 1432
- - - -

and age for B.C./M.B.C. students as a matter of right. From the above, it is clear that the petitioner in W.P.No.25632/2002 is not aggrieved by the starting of the said course, but is aggrieved only in not following certain aspects with respect to the relaxation of age and marks to the students belonging to Backward and Most backward Class students. It is well settled that the said claim cannot be made as a matter of right comparing to the rights given to S.C and S.T. students and so he cannot sustain the writ petition on the grounds raised.

35.Apart from the above discussion, the Government cannot discontinue the said three-year and 5-year B.L. Course, though they have to open more number of law colleges, comparing the population and demand for the said course. Even according to the counter affidavit filed therein, the total number of Applications received for the three-year and five-year B.L. Course for the academic year 2001-2002, are 20853. The total number of Applications for admission received for the academic year 2002-2003 are 21570. But the total number of seats available for the said four law colleges as increased in seats are only 1432. That being the fact, the Government cannot discontinue the existing course merely because there is no space available in the college. The Government should find out alternative space to conduct the said new law course and allow the existing law course to continue in the same place. They can start the said new law course in the Tamil Nadu Dr. Ambedkar Law University, Chennai itself where enough land and building are available. Even if sufficient buildings are not available, they have to construct the buildings, as enough vacant land is available within the said University campus.
36.In view of the above said reasonings, we dispose of the writ petitions giving the following directions:-

(i) The respondents should continue the existing three-year and five-year B.L. Courses in Dr. Ambedkar Government Law College, Chennai, as it was done earlier;

(ii) The respondents have to take immediate steps to call for Applications and conduct Entrance Examination, and to admit the students for the said course in Dr. Ambedkar Government Law College, Chennai.

(iii) It is also open to the Government to impart the five-year B.A.,B.L. (Hons.) degree course, pursuant to the Government Order in G.O.Ms.No.332, Law Department, dated 30.5.2002, at such places as is

convenient without disturbing the present set up, but the results regarding Entrance Examination to the said course should not be published without obtaining any approval of affiliation from the Bar Council of India.

37.With the above directions, W.P.Nos.245625, 24696, 25014 and 25015 of 2002 are allowed accordingly, and W.P.No.25632/2002 is dismissed. No costs. W.P.M.P.Nos.33864, 33865, 34344, 34346, 33953 and 35200 of 2002 are dismissed.

(B.S.R., CJ) (K.G.,J)

6.9.2002.
Index:yes
Internet:yes
sks

To
1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George, Chennai.

2.The Secretary,
Govt. of Tamil Nadu,
Dept. of Law,
Fort St.George, Chennai.

3.The Principal,
Dr. Ambedkar Law College,
Madras High Court Complex,
Chennai.1.
4.The Director of Legal Studies,
Dr. Ambedkar Law College,
Madras High Court Complex,
Chennai.1.

5.The Registrar,
Tamil Nadu Dr. Ambedkar Law University,
Poompozhil, 5 Greenways Road,
Chennai.35.
6.The Chairman,
Bar Council of India,
New Delhi.
7.The Diector of Legal Studies,
Nandanam,
Chennai.35.

The Hon'ble The Chief Justice
and
K.Govindarajan, J.

Order in
W.P.24625/02 etc.